

## EXHIBIT 2-M.7

### Section 106 Tribal Consultation: Step-by-Step Process<sup>i</sup>

#### STEP 1: INITIATE CONSULTATION

- Using information from [TDAT—Tribal Directory Assessment Tool](#), write a letter to the tribe(s) and invite them to consult
  - **Exhibit 2-M.6: Sample Tribal Consultation Letter**
    - Inquire about historic properties
    - Include project description and insert a map of the project area
  - Letters to tribal leaders and Tribal Historic Preservation Officer (THPO) identified using TDAT
  - Letter must be on **Responsible Entity's** letterhead and signed the RE's official
    - **Cannot be delegated** down to a consultant (per HUD guidance in webinar on 6/21/2012)
  - Letter may be transmitted by email
  - Response requested within 30 days of receipt
    - Tribe requested to accept or decline **consultation** within 30 days, NOT to provide information within 30 days
    - If tribe responds with no interest, or there is no response, tribal consultation is complete
  - Responsible Entity may invite non-federally recognized tribes to be consulting parties; or they may also participate as members of the public

#### STEP 2: IDENTIFY AND EVALUATE HISTORIC PROPERTIES

- Gather and share information about known and potential historic properties
  - Evaluate properties on the National Register of Historic Places
  - Tribes possess special expertise in evaluation of historic properties of religious and cultural significance to them
  - If parties disagree, can invite the [Advisory Council on Historic Preservation](#) (ACHP) to consult
  - Tribe can ask ACHP to request that the Responsible Entity obtain a formal Determination of Eligibility
- Consultation meetings with tribes
  - Face-to-face, web, phone
  - Joint consultation with other tribes and consulting parties
  - No fees paid to consulting parties, but travel expenses or consultant costs are allowable
- Confidentiality
  - Be aware it may be culturally inappropriate to share some information
  - Protect sensitive information by all practical means and in accordance with state and federal laws
- If an archeological survey is requested/needed, use HP Fact Sheet #6—[Guidance on Archeological Investigations in HUD Projects](#)

- Fact Sheet #6—Factors to consider
  - Information received from SHPO, THPO, tribes
  - Likely impact of the project on potential properties
  - Previous ground disturbance
  - Likely significance of potential properties
  - Magnitude of the project and degree of HUD involvement
  - Public interest
  - Presence of human remains
  - ACHP [Policy Statement on Affordable Housing and Historic Preservation](#):  
 “Archeological investigation should be avoided for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance”
    - Statement does NOT apply to new construction

### **STEP 3: ASSESS EFFECTS**

- Criteria of Adverse Effect:
  - Physical destruction or damage of historic properties
  - Alteration of building or setting or use that does not meet Secretary of the Interior’s standards
  - Removal of property from historic setting
  - Introduction of incongruent visual, audible, or atmospheric changes
  - Transfer, lease, or sale of historic properties
- Make a Finding
  - No Historic Properties Affected
  - No Adverse Effect
  - Adverse Effect
- Notify all consulting parties of the Finding
  - Parties have 30 days to object
  - Tribe or RE may ask ACHP to review

### **STEP 4: RESOLVE ADVERSE EFFECTS**

- If Adverse Effect, notify ACHP and invite their participation in consultation
  - ACHP will respond within 15 days
  - Criteria for ACHP participation
    - “Presents issues of concern to Indian tribes and Native Hawaiian organizations”
  - Consult to avoid, minimize, or mitigate Adverse Effects
    - Consider alternatives
    - Consider mitigation measures
  - Memorandum of Agreement (MOA)
    - Required signatories—RE, SHPO/THPO, ACHP
    - Invited signatories—THPO, tribe, other consulting parties
    - Must be executed PRIOR TO decision point for project
  - Mitigation Measures
    - Data recovery through excavation
    - Signage or plaques on site
    - Oral history
    - Interpretive exhibits with artifacts

- Web archive or exhibit
- Educational programs
- Deed restrictions for property disposals
- RE must inform tribe and others when stipulations and mitigation measures have been carried out
- Termination of consultation may be requested by
  - THPO on tribal lands, RE, SHPO, ACHP (if participating)
  - Tribe that is consulting about properties off tribal lands may decline to sign MOA, but cannot terminate consultation
- Discoveries During Construction
  - If historic properties are discovered during construction, stop construction and notify tribes, THPO, and SHPO within 48 hours, and re-enter consultation
  - If discovery includes human remains, respectfully cover over and secure the remains, and notify same officials plus local law enforcement officials
    - ACHP “Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects”

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<sup>i</sup> Excerpted from: *Consulting with Indian Tribes About Historic Properties in Environmental Review-Guidance for Responsible Entities*, June 21, 2012; U.S. Department of Housing and Urban Development, Community Planning and Development